

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ENERGY BRANDS, INC. d/b/a

Plaintiff,

v.

SPIRITUAL BRANDS, INC. and
ELICKO TAIEB,

Defendants.
-----X

Case No. 07-10644 (DC)

**Declaration of
Scott Zarin, Esq.**

I, Scott Zarin, Esq., hereby declare and aver:

(1) I am an attorney licensed to practice in New York, and I offer this declaration in support of Defendants Elicko Taieb and Spiritual Brands, Inc.'s motion to dismiss for lack of personal jurisdiction.

(2) Attached as Exhibit A is a true and correct copy of Defendant Elicko Taieb's declaration in support of Defendants' motion to dismiss for lack of personal jurisdiction.

(3) Attached as Exhibit B is a true and correct copy of the 'Mission Statement' page of Defendant Spiritual Brands' web-site www.spiritualh2o.com.

(4) Attached as Exhibit C is a true and correct copy of the 'Product Overview' page of Defendant Spiritual Brands' web-site www.spiritualh2o.com.

(5) Attached as Exhibit D are true and correct copies of the 'Products' pages of Defendant Spiritual Brands' web-site www.spiritualh2o.com.

(6) Attached as Exhibit E is a true and correct copy of the 'In The News' page of Defendant Spiritual Brands' web-site www.spiritualh2o.com.

(7) Attached as Exhibit F is a true and correct copy of the 'Company Overview' page of Defendant Spiritual Brands' web-site www.spiritualh2o.com.

(8) Attached as Exhibit G is a copy of a spreadsheet reflecting all purchases made by retailers, distributors and consumers in New York through Spiritual Brands' web-site www.spiritualh2o.com.

(9) Attached as Exhibit H is a true and correct copy of the 'Direct Selling Industry' page of Defendant Spiritual Brands' web-site www.spiritualh2o.com.

(10) Attached as Exhibit I are true and correct copies of the 'How Do I Get Started' and 'Compensation Plan' pages of Defendant Spiritual Brands' web-site www.spiritualh2o.com.

(11) Attached as Exhibit J is a true and correct copy of the Complaint filed by Plaintiff Energy Brands, Inc. in this action.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: 5/2/08



Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
ENERGY BRANDS, INC. d/b/a
:

Plaintiff,
:

v.
:

SPIRITUAL BRANDS, INC. and
ELICKO TAIEB,
:

Defendants.
:
-----X

Case No. 07-10644 (DC)

**Declaration of Eli Taieb
In Support of Defendants'
Motion to Dismiss**

I, Eli Taieb, hereby declare and aver:

(1) I am a defendant in the above-captioned lawsuit, and I write this declaration in support Defendants Taieb and Spiritual Brands, Inc.'s motion to dismiss.

(2) I am a resident of the state of Florida, and I reside at 13191 N.W. 11th Court, Sunrise, Florida 33323.

(3) Sometime in 2006, I recognized that there was a market for a bottled water drink with a religious theme, and decided to create such a product. I spent several months developing and branding this bottled water drink, which I decided to call 'Spiritual Water'.

(4) I created eleven (11) different labels for the bottles in which the water is contained, each of which depicts an image of a different religious symbol and is

emblazoned with prayers and inspirational words and messages. Each of those labels also contains the name of the drink, 'Spiritual Water', positioned vertically along the bottle with the word 'Spiritual' in bold letters.

(5) To sell 'Spiritual Water', in 2007 I started a company called Spiritual Brands, Inc., which I incorporated in Florida. Spiritual Brands has its principle place of business at 4500 North Hiatus Road, Suite 215, Sunrise, Florida 33323. When I started the company, I decided to sell Spiritual Water products to distributors, retailers and consumers.

(6) In September 2007, I set up a booth at a food and beverage industry trade show in Miami, where I introduced 'Spiritual Water' to the food and beverage industry. 'Spiritual Water' received much attention at this trade show. Shortly thereafter, several national publications, including Newsweek and the New York Times, ran stories about 'Spiritual Water'.

(7) In October 2007, I launched a web-site, www.spiritualh2o.com, to provide information about Spiritual Brands and its family of products, and through which distributors, retailer and consumers could purchase Spiritual Brands' products. That web-site was created in India, and is maintained in Florida.

(8) After the food and beverage trade show in September 2007, I reconsidered the Spiritual Brands' business model, and decided to employ a 'direct selling' business model. Under this model, Spiritual Brands recruits representatives, who sell its products 'directly' to consumers. It does not, however, sell its products directly to retailers or consumers.

(9) To reflect Spiritual Brands' new 'direct selling' business model, in January 2008, I completely revamped its web-site. Unlike the previous version of its site, this reconstituted web-site does not allow retailers, distributors or consumers to purchase 'Spiritual Water' on-line. Rather, it simply provides prospective representatives with information about Spiritual Brands' products and the benefits of becoming a Spiritual Brands representative, and invites these prospective representatives to contact Spiritual Brands for more information.

(10) Before I revamped the web-site, the majority of Spiritual Brands' on-line sales were to distributors, retailers and consumers in Florida, and only fourteen (14), the total sales of which were \$158.53, were to consumers in New York.

(11) Since revamping the web-site in January 2008, no distributors, retailers or consumers have purchased 'Spiritual Water' through the website. Also since revamping the web-site, Spiritual Brands has not had any active representatives in New York who are engaged in the 'direct selling' of Spiritual Brands' products, and, to date, has not derived any revenue from sales in New York. In fact, Spiritual Brands has no connection to New York at all.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: 5/1/08

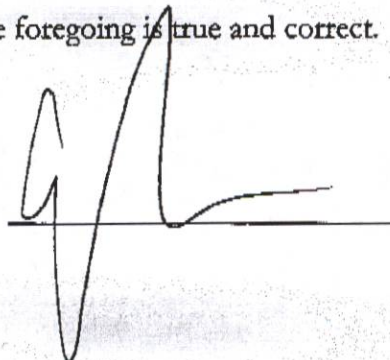
A handwritten signature in black ink, consisting of a stylized, cursive 'G' followed by a horizontal line and a small flourish.

Exhibit B



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TOOLS

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MISSION STATEMENT

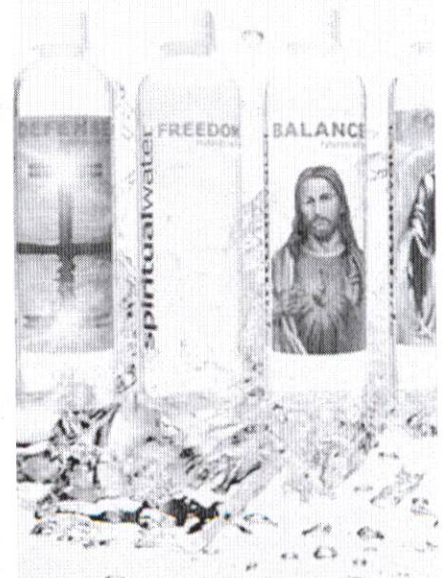
Changing the world's spirit one bottle at the time!

The mission of Spiritual Water is to help people think positive, lift up their spirit, give them a chance to believe in themselves and let them know that God is with them!

Help in making the world a better place - when you think positive and your spirit is up, then everything you do throughout the day will work for you.

Every bottle makes a difference, because Spiritual Water will donate ten cents (\$0.10) of every bottle sold to The Spiritual Foundation, a foundation for children in need.

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PRODUCT OVERVIEW

Spiritual Water was born as bottled water with spirituality, positive thinking, prayers, God, and beliefs. You choose which bottle fits your needs and your feelings, read the prayer, drink the water, believe in God – and in yourself – and the sky's the limit...

[Click to watch Discovering Spiritual Water \(english\)](#)



spiritualwater

The delicious Spiritual Water can meet the demands of discerning and health-conscious consumers by offering purified water that also delivers purified thoughts and actions for a totally positive and wholesome lifestyle.

All products feature beautifully rendered artistic labels that depict full-color images of holy person or symbols, with prayers in English and Spanish and/or inspirational words and messages. The Spiritual Water comes in 11 different versions – each with its own uniquely paired message and image (freedom bottle have no image). Each time you drink you benefit from the soothing, appropriate prayers, for added uplifting inspiration.

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BALANCE WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need to balance your day? Do you want to balance your life? Grab a cold Balance Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

BALANCE PURIFIED DRINKING WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

The Lord's Prayer

Our Father, Who art in heaven, Hallowed be Thy Name. Thy Kingdom come. Thy Will be done, on earth as it is in Heaven. Give us his day our daily bread. And forgive us our trespasses, as we forgive those who trespass against And lead us not into temptation, but deliver us from evil.

Amen.

(LUKE 11:2, MATTHEW 6:9-13)

El Padre Nuestro

Padre nuestro, que estás en el cielo, santificado sea tu Nombre; venga a nosotros tu reino; hágase tu voluntad en la tierra como en el cielo. Danos hoy nuestro pan de cada día; perdona nuestras ofensas, como también nosotros perdonamos a los que nos ofenden; no nos dejes caer en la tentación, y líbranos de todo mal.

Amén.

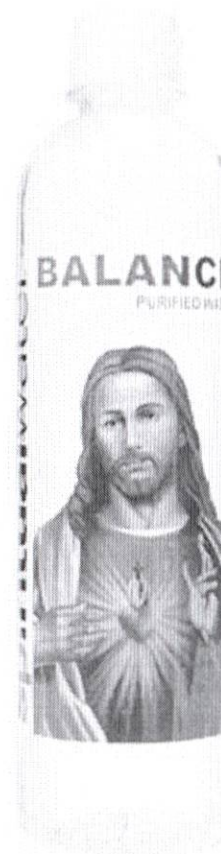
(LUKE 11:2, MATTHEW 6:9-13)

Do You Believe? *bring up your spirit, drink spiritual water!*

We all need to believe in God, and we all need to believe in ourselves in order to accomplish positive thinking, which leads to positive result. It is up to us to make our day go either good or bad and we bring our luck to ourselves, so why not pray, drink purified water more often to stay healthier and more fit, and have God with us throughout the day? You can have it all with Spiritual Water.

For every Spiritual Water bottle sold, Spiritual Brands donate ten cents (\$0.10) to The Spiritual Foundation, a foundation for children in need.

16.9 oz. / 500 mL (.5 Liter)





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FOCUS WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need to focus on something? Do you want more focus in life? Grab a cold Focus Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

FOCUS PURIFIED DRINKING WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Hail Mary

Hail Mary, full of grace. The Lord is with thee. Blessed art thou amongst women, And blessed is the fruit of thy womb, Jesus. Holy Mary, Mother of God, Pray for us sinners, Now and at the hour of our death.

Amen.

(LUKE 1:26-38)

El Ave María

Dios te salve María, llena eres de gracias; el Señor es contigo; bendita tú eres entre todas las mujeres, y bendito es el fruto de tu vientre, Jesús. Santa María, Madre de Dios, ruega por nosotros pecadores, ahora y en la hora de nuestra muerte.

Amén.

(LUKE 1:26-38)

Do You Believe? *bring up your spirit, drink spiritual water!*

We all need to believe in God, and we all need to believe in ourselves in order to accomplish positive thinking, which leads to positive result. It is up to us to make our day go either good or bad and we bring our luck to ourselves, so why not pray, drink purified water more often to stay healthier and more fit, and have God with us throughout the day? You can have it all with Spiritual Water.

For every Spiritual Water bottle sold, Spiritual Brands donate ten cents (\$0.10) to The Spiritual Foundation, a foundation for children in need.

16.9 oz. / 500 mL (.5 Liter)





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DEFENSE WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need more defense? Do you need more protection? Grab a cold defense Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

DEFENSE PURIFIED DRINKING WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Glory Be

Glory be to the Father, and to the Son, and to the Holy Spirit.

As it was in the beginning, is now, and ever shall be, world without end.

Amen.

(ROMANS 11:33-36)

El Gloria Al Padre

Gloria al Padre y al Hijo y al Espíritu Santo.

Como era en el principio, ahora y siempre, y por los siglos de los siglos.

Amén.

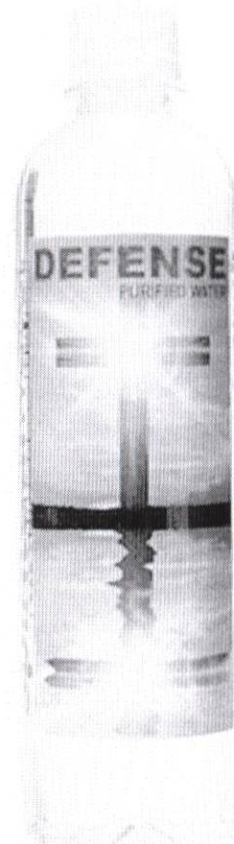
(ROMANS 11:33-36)

Do You Believe? *bring up your spirit, drink spiritual water!*

We all need to believe in God, and we all need to believe in ourselves in order to accomplish positive thinking, which leads to positive result. It is up to us to make our day go either good or bad and we bring our luck to ourselves, so why not pray, drink purified water more often to stay healthier and more fit, and have God with us throughout the day? You can have it all with Spiritual Water.

For every Spiritual Water bottle sold, Spiritual Brands donate ten cents (\$0.10) to The Spiritual Foundation, a foundation for children in need.

16.9 oz. / 500 mL (.5 Liter)



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CONTROL WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need more control? Do Are you in charge?
Grab a cold control Spiritual Water bottle, read the
prayer, believe in God, believe in yourself and the
sky's the limit...

CONTROL PURIFIED WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Saint Michael

St. Michael the Archangel, defend us in battle. Be our defense against the wickedness and snares of the Devil. May God rebuke him, we humbly pray, and do thou, O Prince of the heavenly hosts, by the power of God, thrust into hell Satan, and all the evil spirits, who prowl about the world seeking the ruin of souls.

Amen

(REVELATION 12:7)

Oración a San Miguel

San Miguel Arcángel, Defiéndenos en la batalla; Sé nuestra protección contra la maldad y los engaños del diablo. Que Dios lo reprenda, es nuestra humilde oración. Y puedas, O príncipe de los Seres Celestiales, por el poder de Dios, echar a Satanás al infierno, así como a todos los demás espíritus que vagan por el mundo buscando la ruina de las almas.

Amén.

(REVELATION 12:7)

Do You Believe? *bring up your spirit, drink spiritual water!*

For every bottle sold, Spiritual Brands donate \$0.10 cent to The Spiritual Foundation or the charity of your choice!

16.9 oz. / 500 mL (.5 Liter)



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ENERGY WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need more energy? What is your energy level? Grab a cold energy Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

ENERGY PURIFIED WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

The Lord Is My Shephard

The Lord is my shepherd; I shall not want. He maketh me to lie down in green pastures: he leadeth me beside the still waters. He restoreth my soul: he leadeth me in the paths of righteousness for his name's sake. Yea, though I walk through the valley of the shadow of death, I will fear no evil: for thou art with me; thy rod and thy staff they comfort me. Thou preparest a table before me in the presence of mine enemies: thou anointest my head with oil; my cup runneth over. Surely goodness and mercy shall follow me all the days of my life, and I will dwell in the house of the Lord for ever.

Amen

(Psalm 23:1)

El Señor Es Mi Pastor

El Señor es mi pastor, nada me faltará. En lugares de verdes pastos me hace descansar; junto a aguas de reposo me conduce. Me guía por senderos de justicia por amor de su nombre. Aunque pase por el valle de sombra de muerte, no temeré mal alguno, porque tú estás conmigo; tu vara y tu cayado me infunden aliento. Tú preparas mesa delante de mí en presencia de mis enemigos; has ungido mi cabeza con aceite; mi copa está rebosando. Ciertamente el bien y la misericordia me seguirán todos los días de mi vida, y en la casa

del SEÑOR moraré por largos días.

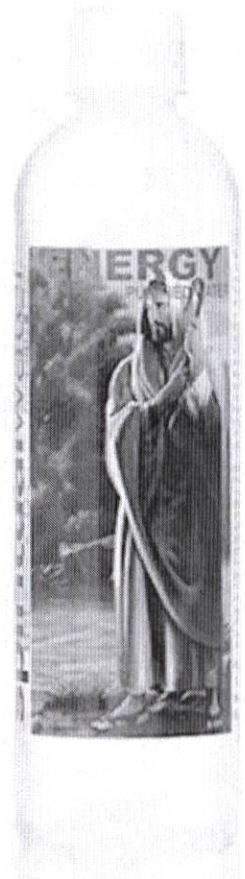
Amén.

(Psalm 23:1)

Do You Believe? *bring up your spirit, drink spiritual water!*

For every bottle sold, Spiritual Brands donate \$0.10 cent to The Spiritual Foundation or the charity of your choice!

16.9 oz. / 500 mL (.5 Liter)





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FORMULA J' WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need Jesus in your life? Do you want to have Jesus with you thru the day? Grab a cold Formula J' Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

FORMULA J' PURIFIED DRINKING WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Oh My Jesus

O my Jesus, forgive us of our sins. Save us from the fires of hell.
Lead all souls into heaven, especially those in most need of thy mercy.
Amen.
(FATIMA PRAYER)

O mi Buen Jesús

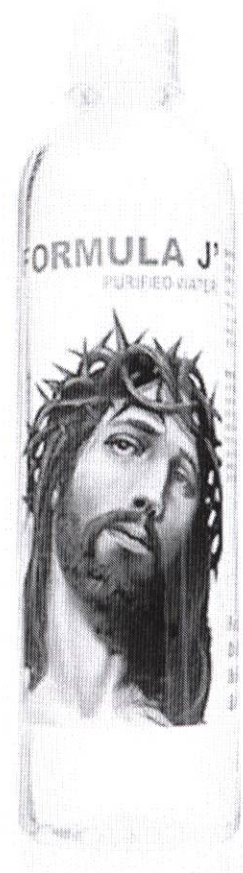
O mi Buen Jesús Perdona nuestros pecados libranos del fuego
del infierno y lleva todas nuestras as almas al cielolas almas al
cielo en especial los más nececitado de tu Gloria
Amén.
(FATIMA PRAYER)

Do You Believe? *bring up your spirit, drink spiritual water!*

We all need to believe in God, and we all need to believe in ourselves in order to accomplish positive thinking, which leads to positive result. It is up to us to make our day go either good or bad and we bring our luck to ourselves, so why not pray, drink purified water more often to stay healthier and more fit, and have God with us throughout the day? You can have it all with Spiritual Water.

For every Spiritual Water bottle sold, Spiritual Brands donate ten cents (\$0.10) to The Spiritual Foundation, a foundation for children in need.

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ESSENTIAL WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you believe in Angels? Do you have an angel watching over you? Grab a cold essential Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

ESSENTIAL PURIFIED WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Guardian Angel

Angel of God, my guardian dear, To whom God's love commits me here, Ever this day, be at my side, To light and guard, Rule and guide.

Amen.

(REVELATION 22)

Angel De la Guarda

Angel de la Guarda Dulce compañía no me desampares ni de noche ni de día hasta que esta en los brazos de Jesús Jose y María.

Amén.

(REVELATION 22)

Do You Believe? *bring up your spirit, drink spiritual water!*

For every bottle sold, Spiritual Brands donate \$0.10 cent to The Spiritual Foundation or the charity of your choice!

16.9 oz. / 500 mL (.5 Liter)



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POWER WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need more power? Do you feel the power? Grab a cold power Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

POWER PURIFIED WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Apostles Creed

I believe in God, the Father almighty creator of heaven and earth and in Jesus Christ, His only Son, our Lord, who was conceived by the Holy Spirit, born of the Virgin Mary, suffered under Pontius Pilate, was crucified, died, and was buried. He descended into hell.

On the third day he rose again from the dead. He ascended into heaven and is seated at the right hand of God, the Father almighty. He will come again in glory to judge the living and the dead. I believe in the Holy Spirit, the Holy Catholic Church, the communion of saints, the forgiveness of sins, the resurrection of the body, and the life everlasting.

Amen.

(CATHOLIC CHURCH)

El Credo De Los Apóstoles

Creo en Dios, Padre todopoderoso, Creador del cielo y de la tierra. Creo en Jesucristo, su único Hijo, nuestro Señor, que fue concebido por obra y gracia del Espíritu Santo, nació de Santa María Virgen, padeció bajo el poder de Poncio Pilato, fue crucificado, muerto y sepultado, descendió a los infiernos, al tercer Día resucitó de entre los muertos, subió a los cielos y está sentado a la derecha de Dios, Padre todopoderoso. Desde allí ha de venir a juzgar a vivos y muertos. Creo en el Espíritu Santo, la santa Iglesia católica, la Comunión de los santos, el perdón de los pecados, la resurrección de la carne, y vida eternal.

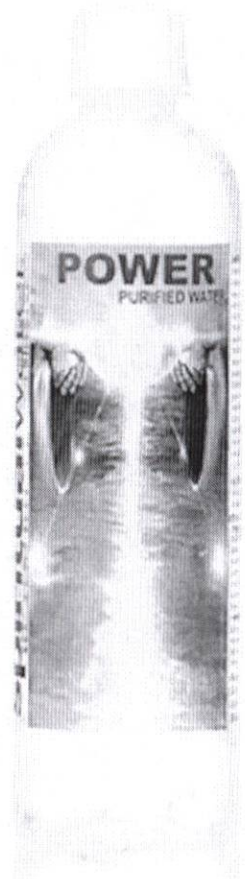
Amén.

(CATHOLIC CHURCH)

Do You Believe? *bring up your spirit, drink spiritual water!*

For every bottle sold, Spiritual Brands donate \$0.10 cent to The Spiritual Foundation or the charity of your choice!

16.9 oz. / 500 mL (.5 Liter)





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REFRESH WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need to refresh your feeling? Do you need to refresh your fate? Grab a cold refresh Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

REFRESH PURIFIED WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Final Prayer

Let us pray. O God, whose only begotten Son, by His life, death, and resurrection, has purchased for us the rewards of eternal life, grant, we beseech Thee, that meditating upon these mysteries of the Most Holy Rosary of the Blessed Virgin Mary, we may imitate what they contain and obtain what they promise, through the same Christ Our Lord.

Amen.

(JOHN 15:4-27)

Oracion Final

Señor, danos el placer de salud continua en cuerpo y mente. Por las súplicas de la Santísima Virgen, guíanos por las tristezas de esta vida a la alegría eterna en la vida que viene. Por Jesucristo, nuestro Señor Amén.

(JOHN 15:4-27)

Do You Believe? *bring up your spirit, drink spiritual water!*

For every bottle sold, Spiritual Brands donate \$0.10 cent to The Spiritual Foundation or the charity of your choice!

16.9 oz. / 500 mL (.5 Liter)



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STRENGTH WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you need to extra strength? Are you running out of strength? Grab a cold strength Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

STRENGTH PURIFIED WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

The Serenity Prayer

Lord, grant me the serenity to accept the things I cannot change, The courage to change the things that I can And the wisdom to know the difference.

Amen.

(PROVERBS 3:6)

Serenidad

El dios me concede la serenidad para aceptar las cosas que no puedocambiar; valor de cambiar las cosas puedo; y sabiduriapara saber la diferencia.

Amén.

(PROVERBS 3:6)

Do You Believe? *bring up your spirit, drink spiritual water!*

For every bottle sold, Spiritual Brands donate \$0.10 cent to The Spiritual Foundation or the charity of your choice!

16.9 oz. / 500 mL (.5 Liter)



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PRODUCTS	OPPORTUNITY	COMPANY	EVENTS	RESOURCE	TOOLS	VIRTUAL OFFICE	ENROLL	CON
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FREEDOM WATER

NOW IS THE PERFECT TIME TO MAKE A CHANGE!

Do you have freedom? Do you need more freedom? Grab a cold freedom Spiritual Water bottle, read the prayer, believe in God, believe in yourself and the sky's the limit...

FREEDOM PURIFIED DRINKING WATER

crisp, fresh drinking water that will make your day...

Read the Prayer... Drink the Water... Believe in God ! Believe in Yourself !

Make Me an Instrument of Your Peace

Lord, make me an instrument of your peace. Where there is hatred, let me sow love, Where there is injury, pardon. Where there is doubt, faith, Where there is despair, hope, Where there is darkness, light, Where there is sadness, joy. O Divine Master, grant that I may not so much seek to be consoled as to console, not so much to be understood as to understand, not so much to be loved, as to love; for it is in giving that we receive, it is in pardoning that we are pardoned, it is in dying that we awake to eternal life.

Amen.

(St. Francis of Assisi)

Hazme un instrumento de tu paz

Señor, hazme un instrumento de tu paz. Donde hay odio, quiero sembrar amor, Cuando se haya producido la lesión, el indulto En caso de duda, la fe, Donde hay desesperación, esperanza, Donde hay tinieblas, la luz, Donde hay tristeza, alegría. O Divino Maestro, haz que me permite no tanto Tratar de ser consolado como consolar, No tanto para ser entendido como entender, No tanto para ser amado, como amar; Porque es en dar que recibimos, Es en perdonar que somos perdonados, Es en morir que despierta a la vida eterna.

Amén.

(San Francisco de Asís)

Do You Believe? *bring up your spirit, drink spiritual water!*

We all need to believe in God, and we all need to believe in ourselves in order to accomplish positive thinking, which leads to positive result. It is up to us to make our day go either good or bad and we bring our luck to ourselves, so why not pray, drink purified water more often to stay healthier and more fit, and have God with us throughout the day? You can have it all with Spiritual Water.



Exhibit E



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IN THE NEWS

Keep up with Spiritual Water News, Blogs, Videos and Press Release:

Bless This Bottled Water

Forget Evian or Vitaminwater. The latest beverage trend: 'Holy Water.'

2007 Newsweek, Inc. - Dec 17, 2007 Issue

Revolutionary "Spiritual Bottled Water" Delivers Health and Prosperity through Prayers and Purified Water that Quenches Material and Spiritual Thirst

New Bottled Water Company Launches "Spiritual Water" Product for Believers, and Supports Health, Happiness, and Children's Charity.

PR.com (press release), Miami - Oct 23, 2007

"Spiritual Water" Makes a Big Splash at International Food and Beverage Show Debut

New product attracts not only investors and distributors but also newspapers and television stations.

Emediawire (press release), WA - Nov 27, 2007

Purification That Comes in a Bottle: Water Takes on New Responsibilities

Another product, Spiritual Water, demands a more participatory (and devotional) role from its consumers. On Dec. 3, the company, based in Davie, Fla., will start to sell a line of Christian-themed waters inscribed with prayers and religious illustrations.

The New York Times Company (Page 2), November 28, 2007

New drinks review: pure water reaches new spiritual heights

The Spiritual Water brand claims to help purify the mind as well as the body, containing Biblical text and images to inspire the drinker.

Drinks-business-review.com, 16th November 2007

For Those Who Thirst for Jesus

Spiritual Brands, Inc., of Davie, Florida, is promoting their new product, Spiritual Water. It comes in ten different versions, "...each with its own uniquely paired message and image.

Adult Christianity NEWS, Nov 06, 07

Bottled Water--With a Purpose

To compete in the \$15 billion bottled water industry, your brand has to find a way to stand out. That is why bottled water companies like...

Entrepreneur.com Nov 30, 2007

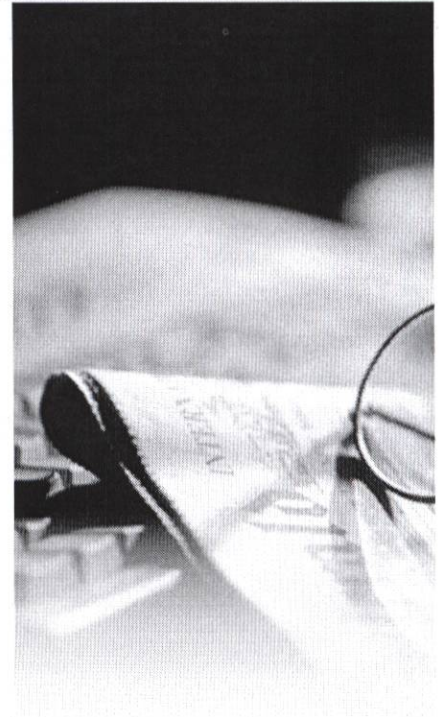


Exhibit F



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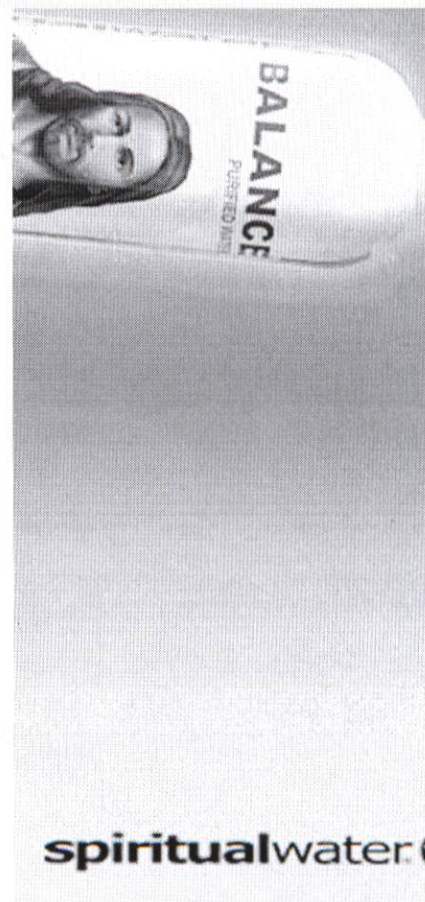
COMPANY OVERVIEW

Spiritual Water is sold in the United States, and we are in the process of expanding worldwide and build a global spiritual brand.

Introduced in 2007, Spiritual Water got more attention and recognition, than a celebrity gets from the paparazzi.

Spiritual Water was born as purified bottled water with spirituality, positive thinking, prayers, and belief in God. You choose which bottle fits your needs and your feelings, read the prayer, drink the water, believe in God – Believe in yourself – and the sky's the limit...

[Click to watch Discovering Spiritual Water \(english\)](#)

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Exhibit G

Item	Price	QTY			
FORMULA J' & BALANCE WATER	\$ 1,69	3	\$	5,07	Amanda Matias
FORMULA J' WATER	\$ 1,69	1	\$	1,69	Beth Kelly
FORMULA J' WATER	\$ 1,69	10	\$	16,90	Allison Weisel
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	2	\$	19,98	Patricia Reese
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	1	\$	9,99	Elizabeth Tucker
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	1	\$	9,99	Sherin Varghese
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	1	\$	9,99	ANDREA DESANTIS
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	1	\$	9,99	Sarah Conner
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	1	\$	9,99	Brenda Momente
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	1	\$	9,99	Rebecca Au
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	1	\$	9,99	Elizabeth Anderson
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	2	\$	19,98	Marissa Festante
SPIRITUAL WATER 6-Mix Pack	\$ 9,99	2	\$	19,98	liz minutoli
STRENGTH & FORMULA J' WATER	\$ 2,50	2	\$	5,00	Linda Duff
			\$	158,53	

CONFIDENTIAL

			ship to				
Elmira Heights	14903	New York					
Honeoye Falls	14472	New York					
Johnson City	13790	New York					
Painted Post	14870	New York					
Merrick	11566	New York					
Red Hook	12571	New York					
YONKERS	10701	New York					
Chenango Forks	13746	New York	868 Beacon St Apt 10	Boston	2215	Massachusetts	
Manhattan	10012	New York					
North Tonawanda	14120	New York					
Brooklyn	11217	New York					
Bethpage	11714	New York					
west hempstead	11552	New York					
East Syracuse	13057	New York					

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Exhibit H



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DIRECT SELLING INDUSTRY

What Is Direct Selling?

Very simply, direct selling (as some of us know it as Network Marketing) is a way to sell products or services directly to customers, away from a retail location. A direct sales business allows you to connect with customers one-on-one, in groups, through online sales, catalog sales or by phone. People in the direct selling industry are often known as independent consultants, distributors or representatives.



A direct selling opportunity is a viable option for people of all ages, genders and income levels. It is an especially good opportunity for men and women who want more flexibility and control over their lives, and who have an entrepreneurial spirit, like working with people, desire a less structured working environment, are looking to supplement their income without making a large investment or want an opportunity to earn an unlimited income.

DSA

The Direct Selling Association (DSA) is a highly regarded U.S. national trade association of firms that manufacture and distribute goods and services sold directly to consumers through an independent sales force.

The Code of Ethics

The Code of Ethics is the cornerstone of the DSA's commitment to ethical business practices and consumer services. It ensures that statements made by member companies are honest and forthright.

The DSA Internet Council's Guidelines for Internet Use was created as a complement to the DSA Code. The Guidelines are voluntary and encourage proper, responsible and professional use of all electronic communication for commercial purposes. At Spiritual Water, we are committed in conducting business with the utmost integrity. We encourage Spiritual Brands, Inc. employees, independent distributors and customers to become familiar with, and be proud of Spiritual Water, its Codes and voluntary Guidelines for Internet Use. If you have questions or concerns regarding your experience with Spiritual Water or an independent distributor, we encourage you to contact us at 1-800-736-9070 or e-mail us at support@spiritualH2O.com.

Direct Selling Association (DSA) -- Facts and Figures:

Worldwide, annual sales from the direct selling industry currently exceed \$100 billion. Over 50 million peoples are involved in the direct selling industry.

A direct selling business is:

A business opportunity based on the sales of a product or service direct to a consumer.

An exciting opportunity to own your own business with a small start up investment.

An excellent opportunity for women. About 75 percent of those working in direct sales are women.

A growing industry: More than \$100 billion worth of goods and services are sold annually through direct sales.

A way to achieve balance in your life. You can set your own hours, become your own boss and earn according to your own ambition and efforts.

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Defense Water	Rewards & Recognition	Foundation		Vide
Control Water	Direct Selling Industry	Career		
Energy Water	How Do I Get Started?	In the News		
Formula J' Water				
Essential Water				
Power Water				
Refresh Water				
Strength Water				
Freedom Water				

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Exhibit I



Live S

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HOW DO I GET STARTED

Take these simple steps to start:

Contact your Spiritual Water Independent Distributor to learn more about the Spiritual Water income opportunity.

Sign your Independent Distributor Agreement and purchase the Starter Kit to help you begin selling products right away and access your own Spiritual Water replicate website, top of the line back office to manage your organization and watch your team growth, brochures, DVDs and training materials for motivation and success...

be successful 

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COMPENSATION PLAN

Spiritual Water offers the most innovative compensation plan in the direct selling industry. With 8 extraordinary ways to earn income and bonuses, your financial freedom is on it's way!!!

1. **Direct Sales - Retail** (click to watch the video)
2. **Reaching Out Spiritual Plan - Team Commission** (click to watch the video)
3. **Spiritual Team Maker Bonus** (click to watch the video)
4. **Spiritual Rank Maker Bonus** (click to watch the video)
5. **Spiritual Car Allowance** (click to watch the video)
6. **Multiple Spiritual Business Centers** (click to watch the video)
7. **Spiritual Leadership Bonus Pool** (click to watch the video)
8. **Spiritual Check Match - Infinity Bonus** (click to watch the video)

By sharing the benefits of Spiritual Water independent income opportunity with others, you will be rewarded based on your sale and the sales of those who are in your organization that you have created (your downline).

[Click here to download the Spiritual Water compensation plan brochure \(PDF\)](#)



[Click here to download the Spiritual Water compensation plan brochure](#)

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Exhibit J

David H. Bernstein (DB 9564)
S. Zev Parnass (SP 3284)
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
(212) 909-6696 (telephone)
(212) 521-7696 (facsimile)

ELECTRONICALLY FILED

Attorneys for Plaintiff Energy Brands Inc. d/b/a Glacéau

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ENERGY BRANDS INC. d/b/a GLACÉAU, :
 :
 : Plaintiff, :
 :
 : v. :
 :
 : SPIRITUAL BRANDS, INC. and ELICKO :
 : TAIEB, :
 :
 : Defendants. :
----- X

07 Civ. 10644 (LTS)

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Energy Brands Inc. d/b/a Glacéau ("Glacéau"), by its attorneys, Debevoise & Plimpton LLP, for its complaint, alleges as follows:

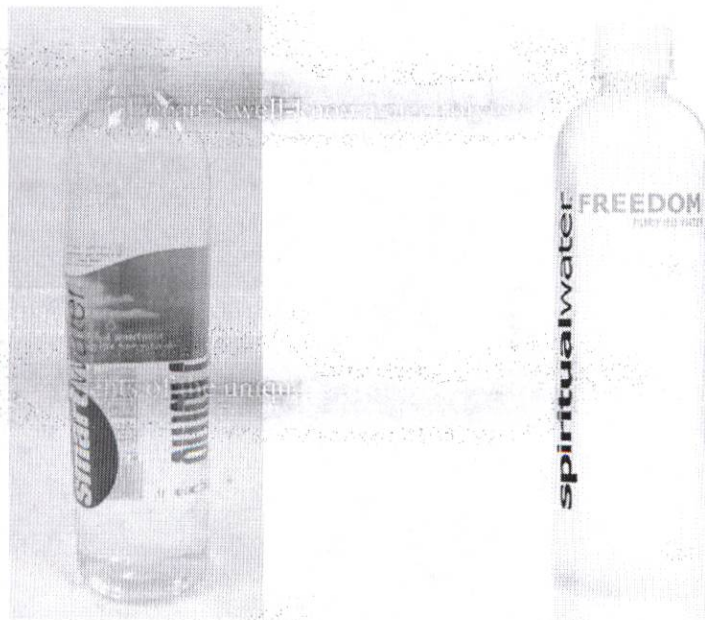
NATURE OF THE ACTION

1. This is an action for trade dress infringement, false designation of origin, trade dress dilution, deceptive acts and practices, and unfair competition arising out of the recent launch of a new purified bottled water product, **spiritualwater**, by Spiritual Brands, Inc. ("Spiritual Brands") and its principal Elicko Taieb ("Taieb" or "Mr. Taieb") (collectively, "Defendants").

2. Within the last several weeks, Defendants have embarked on an unlawful **campaign to lure consumers into purchasing spiritualwater in the mistaken belief that it comes from, is sponsored or licensed by, or is associated or affiliated with, the**

smartwater brand, Glacéau's well-known electrolyte-enhanced water product. The lynchpin of Defendants' campaign is the packaging of the **spiritualwater** product, which mimics several key elements of the well-known and distinctive **smartwater** trade dress.

3. As shown in the below pictures, the trade dress for **spiritualwater** mimics so many key elements of the unique, distinctive **smartwater** trade dress that it cannot be the result of sheer coincidence.



The similarities include: (i) a similarly-shaped, tall, narrow, cylindrical clear plastic bottle; (ii) a similar vertical presentation of the brand name; (iii) the brand name written in lower case letters with the first word in bold letters and the word "water" in non-emphasized letters; and (iv) a clear/white (light) cap.

4. Furthermore, four of the five names Defendants selected for **spiritualwater**'s different SKUs -- "Balance," "Defense," "Focus" and "Formula J" -- are virtually identical to some of Glacéau's most popular flavors of **vitaminwater**

(Glacéau's other principal product): "Balance," "Defense," "Focus" and "Formula 50." Defendants also have announced that additional flavors, such as "Power," "Essential," "Energy" and "Refresh," will be sold beginning on December 3, 2007. These SKUs, too, are virtually identical to some of Glacéau's most popular flavors of **vitaminwater**: "Power-C," "Essential," "Energy" and "Revive."

5. Although the religious imagery on some **spiritualwater** bottles shown on Defendants' website, www.spiritualh2o.com (see the adjacent image), is different from the cloud imagery on **smartwater** bottles, consumers seeing the line of **spiritualwater** products will, because of the similar trade dress and product names, mistakenly believe that it comes from, is sponsored or licensed by, or is associated or affiliated with, Glacéau, the producer of **smartwater**. That confusion is exacerbated by the advertising for **spiritualwater** on Defendants' website, business card and promotional calendar, which feature the **spiritualwater** name on the bottle without any imagery, as shown below (juxtaposed next to a bottle of **smartwater**) and in the attached Exhibits A-C.





6. Defendants' unlawful conduct is causing and will continue to cause serious and irreparable harm to Glacéau. This conduct, if not enjoined, will eviscerate the goodwill Glacéau has spent more than ten years carefully cultivating for its **smartwater** brand.

THE PARTIES

7. Glacéau is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 17-20 Whitestone Expressway, Whitestone, New York 11357.

8. Upon information and belief, Defendant Spiritual Brands is a corporation organized and existing under the laws of the State of Florida with its principal place of business located at 4301 South Flamingo Road #103-204, Davie, Florida 33330.

9. Upon information and belief, Defendant Taieb is a Florida domiciliary residing at 13191 NW 11th Court, Sunrise, Florida 33323.

JURISDICTION AND VENUE

10. This Court has original jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332 and 1338 and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. The amount in controversy is in excess of \$75,000, exclusive of interest and costs.

11. This Court has personal jurisdiction over Defendants pursuant to N.Y. Civ. Prac. L. & R. §§ 301 & 302(a). Upon information and belief, Defendants regularly have solicited business in the State of New York and in this District via the Internet, have transacted and done business in the State of New York and in this District, have wrongfully caused injury to Glacéau in the State of New York and in this District, such injury being reasonably foreseeable, and derive substantial revenue from interstate commerce.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this District. Venue over Defendant Spiritual Brands also is proper in this District pursuant to 28 U.S.C. § 1391(c) because it is deemed to reside in this District.

SMARTWATER AND ITS TRADE DRESS

13. Glacéau pioneered the enhanced water category when it launched the **smartwater** brand in 1996, a high-quality, vapor-distilled bottled water enhanced with electrolytes, with a unique and distinctive packaging that would make it distinguishable from the sea of typical bottled waters.

14. In just over ten years, the **smartwater** brand has achieved critical renown, including in the industry, the press, and among consumers. It also has enjoyed a

consistently high level of commercial success. Notwithstanding the addition of other competitors in this category, the **smartwater** brand remains the recognized leader in the electrolyte-enhanced bottled water category.

15. The trade dress of **smartwater** is one of the most important ways in which consumers identify the brand on the shelf or in the hands of celebrities and other consumers, and it thus is among Glacéau's most valuable intellectual property rights. To create a distinctive look for the product, Glacéau enlisted the assistance of a designer named Douglas Lloyd, who was well-known for work he had done with, among others, Gucci and The Gap. Together, Lloyd and Glacéau created a unique packaging for the **smartwater** product. In January 2006, Glacéau slightly refreshed the trade dress to update the packaging while still maintaining the same overall visual impression and preserving all of the core brand-identifying elements.

16. **smartwater's** success has been based largely on its trade dress and the clean, bold, modern image that the trade dress conveys.

17. The key elements of this distinctive trade dress include: (i) a bullet-shaped, tall, narrow, cylindrical clear plastic bottle; (ii) a vertical presentation of the brand name; (iii) the brand name written in lower case letters with the first word in bold letters and the word "water" in non-emphasized letters; and (iv) a clear (light) cap.

18. The **smartwater** trade dress has received unsolicited, positive attention from the popular and industry media. For example:

- The February 1, 2000 issue of *Beverage Industry* noted that the package design is "one of the biggest assets" of **smartwater** products (as well as other Glacéau products).

- The November 13, 2000 issue of *BRANDWEEK* described the **smartwater** packaging as “striking.”
- The July 1, 2003 cover story in *Beverage Industry* magazine praised the **smartwater** trade dress for its “catchy labels with minimalist colors.”
- On April 18, 2006, the *Gourmet Retailer* website posted an entry which noted **smartwater**’s “slender silhouette” and praised its “fresh look, and arresting on-shelf presence.”

19. The **smartwater** bottle label is registered on the Principal Register of the United States Patent and Trademark Office under Registration No. 2,840,063 (under GLACÉAU SMARTWATER and Design). *See* Exhibit D.

SMARTWATER’S ADVERTISING AND MARKETING

20. Glacéau’s “grassroots” marketing strategy for the **smartwater** brand trades heavily off of the distinctive and recognizable **smartwater** trade dress.

21. As part of this grassroots marketing approach, Glacéau has invested in events marketing, including at such desirable venues as the 2006 Daytime Emmy Awards, the 2006 Sundance Film Festival, the 2005 Revlon Run Walk and the 2005 MTV Video Music Awards. Glacéau also makes **smartwater** products available at smaller, targeted events such as local road races or art gallery openings. In addition, Glacéau invests in product placements for **smartwater** in television shows such as *CSI*, *Scrubs*, *Grey’s Anatomy* and *The Today Show*.

22. **smartwater** products are often sold using point of sale devices, such as individualized display cases or coolers. All of the point of sale materials include elements designed to be evocative of the **smartwater** trade dress. In addition to point of sale materials, Glacéau has a substantial print advertising campaign which prominently features the **smartwater** trade dress. The **smartwater** trade dress also appears on

Glacéau's Fleet Graphics delivery trucks, approximately 300 of which are on the road each day.

23. All of these strategies work only if consumers later recognize **smartwater** products when they go to a store to purchase them or when they describe the products to others. The nature of the trade dress supports these strategies because, even from far away, the product is recognizable from its distinctive trade dress as a **smartwater** product.

24. For example, shortly after Apple's CEO Steve Jobs delivered a keynote address while drinking **smartwater**, a blogger on the Mac website *MacRumors: Forum* inquired as to what was the "pretty distinctive brand of water" that Mr. Jobs was drinking. A number of bloggers responded that it was **smartwater**, which prompted discussion about the product and where they could get it. One person even responded "Its hard to imagine a more industrial design water bottle than that ... I think next time I see it ill [sic] pick it up, and tell everyone im [sic] drinking the water steve jobs uses." See <<http://forums.macrumors.com/showthread.php?t=176903>>.

25. In 2006, Glacéau spent nearly \$2.4 million advertising and promoting the **smartwater** brand.

26. In 2007, Glacéau launched a major advertising campaign for **smartwater** featuring the film and television star Jennifer Aniston. This is the largest **smartwater** ad campaign in Glacéau's history, costing over \$13.1 million.

27. Glacéau also recently signed New England Patriots quarterback Tom Brady to endorse the **smartwater** brand in a campaign that will consist of print, outdoor, Internet and television advertisements and cost an estimated \$5 million.

SALES OF SMARTWATER

28. **smartwater** beverages have enjoyed exponential sales growth since their introduction in 1996. In 2006 alone, Glacéau's retail revenues from **smartwater** beverages exceeded \$75.6 million, representing the sale of nearly 56 million bottles. In 2007, Glacéau expects revenues of more than \$149 million from sales of more than 111 million bottles.

DEFENDANTS' BAD FAITH

29. Defendants' bad faith in developing the **spiritualwater** trade dress is evident both from an examination of Defendants' business practices and the trade dress used on third parties' water products.

30. Upon information and belief, Defendant Taieb operates or is affiliated with numerous pornographic websites and businesses. One of these businesses, Movixo, Inc. d/b/a movixo.com ("Movixo"), apparently rents pirated, low-quality copies of pornographic videos. Zero Tolerance Entertainment filed a multi-million dollar lawsuit against Movixo in 2006 alleging copyright and trademark infringement.

31. Glacéau cannot tolerate the potential tarnishment that could attach if **spiritualwater** products are confused with **smartwater**, and if consumers were to link these brands with Mr. Taieb's pornographic businesses. Moreover, the fact that Mr. Taieb has been involved in trademark disputes in the past suggests that he is well familiar with trademark protection and infringement, and thus that he adopted the trade dress for the **spiritualwater** product, and the product names for its different SKUs, in bad faith.

32. Defendants' conduct is all the more culpable when measured against other entries in the bottled water category. A survey of the trade dress used by these other

bottled water products shows the many, virtually limitless options available to companies that wish to enter this market:



33. Thus, the similarity of **spiritualwater**'s trade dress to the **smartwater** trade dress is all the more striking when viewed in light of this range of designs for other products in the category.

LIKELIHOOD OF CONFUSION

34. Given the striking similarity between the products' respective trade dresses, there is a high likelihood that consumers and retailers will buy the **spiritualwater** product under the mistaken belief that it comes from, is sponsored or licensed by, or is associated or affiliated with, Glacéau, the makers of **smartwater**.

35. This likelihood of confusion is further exacerbated by the fact that bottled water is a relatively low-cost item (less than \$2 per bottle). Accordingly, consumers are unlikely to exercise a great deal of care before making a purchase. Moreover, a recent article quoted Mr. Taieb as stating that **spiritualwater** soon will be available in stores (it already is available on Defendants' website). In that regard, bottled water is often an

impulse purchase and is placed in coolers near a store's checkout counter or at the end of aisles in grocery stores.

IRREPARABLE HARM

36. In developing and marketing its **spiritual**water product, Defendants have gone beyond fair competition and have adopted a trade dress that is likely to confuse consumers into thinking they are buying a product that comes from, is sponsored or licensed by, or is associated or affiliated with, Glacéau, the makers of **smart**water.

37. As a result of Defendants' conduct, Glacéau will suffer irreparable harm. It may lose sales and revenues, as customers may mistakenly believe that **spiritual**water is Glacéau's foray into the religious realm, and may choose to buy this "special edition" of **smart**water in lieu of **smart**water itself. Of even more concern is that other consumers may be offended by the religious messages and may abandon the Glacéau brand in its entirety. And, even worse, if Mr. Taieb's **spiritual**water business is publicly linked with his other business of pirating pornographic movies, the obvious hypocrisy involved may forever taint **smart**water, causing harm from which the brand might never recover.

GLACÉAU'S EFFORTS TO RESOLVE THIS DISPUTE

38. Immediately upon learning of Defendants' conduct, Glacéau's outside counsel wrote a letter to Defendants objecting to the trade dress of its **spiritual**water product. A copy of this October 31, 2007 letter is attached as Exhibit E.

39. Defendants did not respond to that letter. Accordingly, on November 7, 2007, Glacéau's outside counsel sent another letter to Defendants, demanding a response within five days. *See* Exhibit F.

40. In response, on November 15, counsel for Defendants sent a letter (dated November 13) stating that Defendants “may agree to undertake appropriate and necessary measures to ensure agreed compliance with [Glacéau’s] request to effectuate the required changes in any promotional marketing,” but refused to change the bottle’s trade dress. See Exhibit G. Accordingly, this action was initiated.

**COUNT I: TRADE DRESS INFRINGEMENT AND
FALSE DESIGNATION OF ORIGIN
UNDER SECTION 43(a) OF THE LANHAM ACT**

41. Glacéau repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

42. The trade dress of **smartwater** is used in commerce, is non-functional, is inherently distinctive, and has acquired substantial secondary meaning in the marketplace.

43. **spiritualwater**, which is now being used in commerce, features a trade dress that is confusingly similar to the trade dress of **smartwater**. Defendants’ manufacture, distribution, sale and promotion of **spiritualwater** thus is likely to cause confusion and mistake and to deceive retailers and consumers as to the source, origin or sponsorship of their products. Consumers seeing **spiritualwater** in the marketplace likely will believe that it comes from, is sponsored or licensed by, or is associated or affiliated with, **smartwater**.

44. Defendants’ acts of trade dress infringement and false designation of origin, unless restrained, will cause great and irreparable injury to Glacéau and to the business and goodwill represented by the **smartwater** trade dress, in an amount that cannot be ascertained at this time, leaving Glacéau with no adequate remedy at law.

45. Defendants' deceptive marketing and sales practices in connection with **spiritualwater** in its present packaging constitutes infringement of the **smartwater** trade dress and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

46. By reason of the foregoing, Glacéau is entitled to injunctive relief against Defendants, restraining them from any further acts of trade dress infringement and false designation of origin and, after trial, recovery of any damages (to the extent calculable) proven to have been caused by reason of Defendants' aforesaid acts.

**COUNT II: TRADE DRESS DILUTION
UNDER NEW YORK STATUTORY LAW**

47. Glacéau repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

48. The trade dress of **smartwater** is used in commerce, is non-functional, is inherently distinctive, and has acquired substantial secondary meaning in the marketplace.

49. Defendants' manufacture, distribution, sale and promotion of **spiritualwater** is likely to dilute and detract from the distinctiveness of the **smartwater** trade dress.

50. Defendants' acts of trade dress dilution, unless restrained, will cause great and irreparable injury to Glacéau and to the business and goodwill represented by the **smartwater** trade dress, in an amount that cannot be ascertained at this time, leaving Glacéau with no adequate remedy at law.

51. The acts of Defendants as described above constitute trade dress dilution in violation of N.Y. Gen. Bus. Law § 360-1.

**COUNT III: DECEPTIVE ACTS AND
PRACTICES UNDER NEW YORK STATUTORY LAW**

52. Glacéau repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

53. The acts of Defendants as described above constitute deceptive acts and practices in violation of N.Y. Gen. Bus. Law §§ 349-50.

**COUNT IV: UNFAIR COMPETITION
UNDER NEW YORK COMMON LAW**

54. Glacéau repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

55. The acts of Defendants as described above constitute unfair competition in violation of Glacéau's rights under New York State common law, as preserved by N.Y. Gen. Bus. Law § 360-o.

PRAYER FOR RELIEF

WHEREFORE, Glacéau respectfully prays:

A. That Defendants and all those acting in concert or participation with them (including, but not limited to, their officers, directors, agents, servants, wholesalers, distributors, retailers, employees, representatives, attorneys, subsidiaries, related companies, successors, assigns and contracting parties) be temporarily, preliminarily and then permanently enjoined and restrained from:

- i. manufacturing, distributing, shipping, advertising, marketing, promoting, selling or otherwise offering for sale **spiritualwater**

in its present trade dress or any other trade dress that is confusingly similar to that of **smartwater**; and

ii. representing, by any means whatsoever, that any products manufactured, distributed, advertised, offered or sold by Defendants are Glacéau's products or vice versa, and from otherwise acting in a way likely to cause confusion, mistake or deception on the part of purchasers or consumers as to the origin or sponsorship of such products; and

iii. doing any other acts or things calculated or likely to cause confusion or mistake in the minds of the public or to lead purchasers or consumers into the belief that Defendants' products come from Glacéau or are somehow sponsored or licensed by, or associated or affiliated with, Glacéau or its products; and

iv. otherwise unfairly competing with Glacéau.

B. That Defendants and those acting in concert or participation with them (including, but not limited to, their officers, directors, agents, servants, wholesalers, distributors, retailers, employees, representatives, attorneys, subsidiaries, related companies, successors, assigns and contracting parties) take affirmative steps to dispel such false impressions that heretofore have been created by the use of the **spiritualwater** trade dress, including, but not limited to, recalling from any and all channels of distribution any and all infringing products and promotional materials.

C. That Defendants account to Glacéau for their profits and any damages sustained by Glacéau, to the extent calculable, arising from the foregoing acts of

trade dress infringement, false designation of origin, trade dress dilution, deceptive acts and practices and unfair competition.

D. That, in accordance with such accounting, Glacéau be awarded judgment for three times such profits or damages (whichever is greater), pursuant to 15 U.S.C. § 1117 and N.Y. Gen. Bus. Law § 349(h).

E. That Glacéau be awarded its costs, including its reasonable attorneys' fees and disbursements in this action, pursuant to 15 U.S.C. § 1117 and N.Y. Gen. Bus. Law § 349(h).

F. That Glacéau be awarded punitive damages pursuant to the law of the State of New York in view of Defendants' intentional and willful trade dress infringement and other conduct.

G. That Defendants deliver up for destruction all infringing products in their possession or control and all means of making the same in accordance with 15 U.S.C. § 1118.

H. That Defendants file with the Court and serve on counsel for Glacéau within thirty (30) days after entry of any injunction issued by the Court in this action, a sworn written statement pursuant to 15 U.S.C. § 1116(a) setting forth in detail the manner and form in which Defendants have complied with any injunction which the Court may enter in this action.

I. That Glacéau have such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Glacéau demands a trial by jury on all claims as to which a jury trial may be had.

Dated: November 28, 2007
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ S. Zev Parnass
David H. Bernstein (DB 9564)
S. Zev Parnass (SP 3284)
919 Third Avenue
New York, New York 10022
(212) 909-6696 (telephone)
(212) 521-7696 (facsimile)

*Attorneys for Plaintiff Energy Brands Inc.
d/b/a Glacéau*

Certificate of Service

I, Scott Zarin, Esq., declare, under penalty of perjury, that in *Energy Brands, Inc. v. Spiritual Brands, Inc.*, Case No. 07-10644, I served, on May 2, 2008, via Federal Express:

- (1) Defendants' Notice of Motion to Dismiss;
- (2) Defendants' Memorandum of Law In Support of Motion to Dismiss;
and
- (3) Declaration of Scott Zarin, Esq.

on counsel for Plaintiff Energy Brands, Inc.:

S. Zev Parnass, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Dated: _____

5/2/08

A handwritten signature in blue ink, appearing to read "Scott Zarin", is written over a horizontal line.